

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:04-CR-119-FL-1

UNITED STATES OF AMERICA,
)
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)
)
v.
)
LEON KEITH JAMES,
)
)
Movant.
)

ORDER

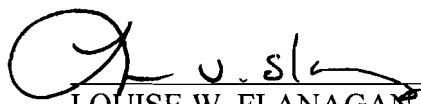
This matter is before the court on petitioner's response to the court's notice of its intent to recharacterize his motion for specific performance as an attempt to file a motion under 28 U.S.C. § 2255. The matter is ripe for adjudication.

On November 5, 2008, petitioner filed this *pro se* motion for specific performance. On January 12, 2010, pursuant to Castro v. United States, 540 U.S. 375 (2003), the court notified petitioner of its intent to recharacterize his motion for specific performance as an attempt to file a motion under § 2255. In response, petitioner filed a motion opposing the court's attempt to recharacterize his motion and requesting that the court rule upon the merits of his motion as filed.

The court finds that petitioner's motion for specific performance is an attempt to file a petition pursuant to § 2255. This court has the responsibility to classify such a pleading according to its contents, not its caption. United States v. Winestock, 340 F.3d 200, 203 (4th Cir. 2003). Thus, this court construes petitioner's motion for specific performance as a motion pursuant to § 2255. The court now must conduct an initial review of that petition.

Having conducted an examination of petitioner's motion pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings and it appearing that dismissal is not warranted at this time, the United States Attorney is DIRECTED to file an answer pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the above-captioned § 2255 Motion to Vacate, Set Aside or Correct Sentence, within forty (40) days of the filing of this order.

SO ORDERED, this the 13th day of October, 2010.



LOUISE W. FLANAGAN
Chief United States District Judge